

AKIN, GUMP, STRAUSS, HAUER & FELD, L.L.P.

ATTORNEYS AT LAW

A REGISTERED LIMITED LIABILITY PARTNERSHIP
INCLUDING PROFESSIONAL CORPORATIONS

1333 NEW HAMPSHIRE AVENUE, N.W.

SUITE 400

WASHINGTON, D.C. 20036

(202) 887-4000

FAX (202) 887-4288

www.akingump.com

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WRITER'S DIRECT DIAL NUMBER (202) 887-4011
WRITER'S E-MAIL ADDRESS tdavidson@akingump.com

July 30, 2001

VIA COURIER

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Portals II Building, Room TW-A35
Washington, DC 20554

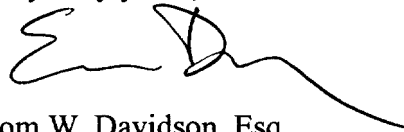
Re: In the Matter of Amendment of Section 73.606(b), Table of Allotments,
Television Broadcast Stations, and Section 73.622(b), Table of Allotments,
Digital Television Broadcast Stations (Hibbing, Minnesota),
MM Docket No. 01-116, RM-10069
Comments of KBJR License Inc.

Dear Ms. Salas:

Enclosed for filing on behalf of KBJR License Inc. ("KBJR"), licensee of Station KBJR-TV, Superior, Wisconsin, are an original and four copies of KBJR's comments in the above-referenced proceeding.

Please direct any inquiries regarding this matter to the undersigned.

Very truly yours,



Tom W. Davidson, Esq.
Erin L. Dozier, Esq.

Enclosures

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of

Amendment of Section 73.606(b)
Table of Allotments,
Television Broadcast Stations and
Section 73.622(b), Table of Allotments
Digital Television Broadcast Stations
(Hibbing, Minnesota)

MM Docket No. 01-116
RM-10069

To: Mass Media Bureau

COMMENTS OF KBJR LICENSE, INC.

KBJR License, Inc. ("KBJR"), licensee of Station KBJR-TV, Superior, Wisconsin, by its attorneys and in response to the Notice of Proposed Rulemaking in the above-captioned proceeding ("NPRM")¹ hereby submits these comments in support of the proposed change to the digital television ("DTV") table of allotments. In response to the Petition for Rulemaking of Duluth-Superior Area Educational Television Corporation ("Duluth ETV"), the Mass Media Bureau of the Federal Communications Commission ("FCC" or "Commission") has proposed to add Channel 31, Hibbing, Minnesota to the DTV table of allotments. Duluth ETV has a pending application to construct a new analog ("NTSC") station on Channel 18, Hibbing, MN, but wishes to amend that application to specify digital operations on Channel 31. KBJR is significantly affected by this proceeding because of the potential for interference by Duluth ETV's proposed operations on NTSC Channel 18 to KBJR's proposed operation of a new DTV station on Channel 19 at Superior, Wisconsin. Although KBJR believes that Duluth ETV's operations on

¹ In the Matter of Amendment of Section 73.606(b), Table of Allotments, Television Broadcast Stations, and Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Hibbing, Minnesota), MM Docket No. 01-116, RM-10069 (rel. June 7, 2001).

Channel 18 at Hibbing are precluded by the FCC's adoption of the DTV table of allotments and related FCC rules and policies, KBJR is filing these comments in an abundance of caution in support of the adoption of the proposed change to the DTV table. The addition of Channel 31, Hibbing, Minnesota will allow Duluth ETV to amend its pending NTSC application to specify DTV Channel 31, which will ensure that KBJR's proposed DTV operations on Channel 19 are not affected by the presently proposed adjacent channel operations of Duluth ETV.²

I. Background

On September 20, 1996, Duluth ETV filed an application for a new NTSC station on Channel 18 at Hibbing, Minnesota (the "Duluth ETV Application" or the "Application"),³ which was within an area designated by the FCC as a "freeze area."⁴ Subsequent to the filing of the Application, the FCC adopted its DTV table of allotments, and assigned Channel 18 at Bemidji to the licensee of Station KAWE, Channel 17 to the licensee of Station KQDS, and Channel 19 to KBJR for purposes of providing DTV service. On October 28, 1999, KBJR filed an application on FCC Form 301 for a permit to construct and operate a new DTV station on

² Although Duluth ETV's Petition states that it already has amended its pending NTSC application to request digital operations on Channel 51, the FCC's NPRM does not reference this amendment, nor does it state that the amendment has been accepted for filing.

³ KBJR only learned of the Application upon review of the NPRM in this proceeding. The Duluth ETV Application apparently was not placed on public notice because the Video Services Division determined that it was not acceptable for filing because it did not include a request for waiver of the freeze. Duluth ETV filed a petition for reconsideration of the FCC's refusal to permit it to amend its application to include a freeze waiver request. In its NPRM, the FCC granted the petition for reconsideration and placed the application on pending status. See NPRM at ¶1, note 1.

⁴ See Advanced Television Systems Order, RM-5811, Mimeo No. 4074 (rel. July 17, 1987), 52 FR 28346 (1987) (announcing that the FCC would no longer accept applications for new NTSC television stations within certain areas in order to preserve spectrum for DTV use).

Channel 19, Superior, Wisconsin, the channel assigned to KBJR in the DTV Table of Allotments.⁵ KBJR's DTV application remains pending before the FCC.

Recognizing that its Application for a new NTSC station at Hibbing could not be granted due to the inevitable co-channel and adjacent channel interference that would result, on July 17, 2001, Duluth ETV filed a petition for rulemaking (the "Petition") requesting that the Commission amend the DTV table of allotments to add Channel 31, Hibbing, MN. Duluth ETV states that, upon grant of the relief requested, it will amend its pending Application to specify digital operations on Channel 31.

II. The DTV Regulatory Scheme Precludes Grant of the Duluth ETV Application to Operate on Channel 18 at Hibbing

As Duluth ETV stated in its Petition, the Application, in its present form, cannot be granted.⁶ The FCC chose not to protect pending applications for vacant NTSC allotments within freeze areas when it adopted the DTV table of allotments. The FCC has stated that pending freeze area applications will only be granted if the operations proposed would not cause interference to DTV stations or allotments.⁷ The FCC has further stated that even where such applications are granted, the new NTSC stations may be required to limit their operations to avoid interference to DTV stations and allotments, and also would be required to accept interference from DTV stations.⁸

⁵ See Application of KBJR License, Inc., FCC File No. BPCDT-19991028AFF (filed October 28, 1999).

⁶ See Petition at 5.

⁷ See In the Matter of Advanced Television Systems and Their Impact on the Existing Television Broadcast Service, *Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders*, MM Docket No. 87-268, FCC No. 98-315 at ¶ 21 (rel. Dec. 18, 1998).

⁸ Id.

As the engineering study attached to the Petition correctly concludes, Duluth ETV's proposed operations on Channel 18 would cause unacceptable levels of interference to stations KAWE-DT, Channel 18, Bemidji, MN, KQDS-DT, Channel 17, Duluth, MN, and KBJR-DT, Channel 19, Superior, WI.⁹ Because pending NTSC freeze area applications can only be granted if they propose operations that will not interfere with DTV operations, Duluth ETV's pending NTSC application must be amended to specify operations consistent with the DTV regulatory scheme in order to be granted. KBJR supports the proposed amendment to the DTV table of allotments because it will permit Duluth ETV to specify operations that will not interfere with the operations of KBJR-DT and other DTV stations, thereby removing any risk of adjacent channel interference.

III. KBJR Urges the FCC to Act Expeditiously on the Proposed Amendment to Remove the Uncertainty Caused by the Duluth ETV Application

KBJR urges the Commission to act expeditiously on its proposed amendment to the table of allotments. Although KBJR believes that the Commission's rules and policies do not permit grant of the Duluth ETV NTSC application, the pendency of the application in its present form contributes to the existing uncertainty surrounding KBJR's proposed digital operations. KBJR's DTV application has been pending for nearly two years. Because of its proximity to the U.S.-Canada border, the KBJR-DT application requires coordination with Canada. With only nine months remaining until the DTV construction deadline, KBJR still does not have an authorization in hand, and does not know whether Canadian coordination or other issues may require an amendment to its DTV application or the placement of special terms and/or conditions on its construction permit. KBJR's buildout is further complicated by the severe weather in the Duluth-Superior area, which precludes construction during the months of November through April. Prior to learning of the Duluth ETV Application, KBJR already was faced with

⁹ See Petition, Engineering Statement, at page 1.

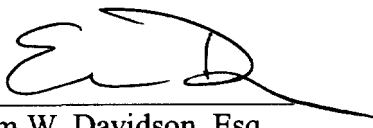
significant hurdles in its effort to plan for the DTV buildout. KBJR respectfully requests that the Commission act expeditiously in the instant proceeding to remove the additional uncertainty caused by Duluth ETV's proposed operations on Channel 18.

IV. Conclusion

KBJR urges the FCC to adopt the change to the DTV table of allotments proposed in its NPRM. The operations presently proposed in the Application will undoubtedly interfere with KBJR's proposed digital operations on Channel 19. The addition of Channel 31 at Hibbing will allow Duluth ETV to specify a new channel in its pending Application, and will remove the possibility of Duluth ETV's operations on adjacent Channel 18. Because the pendency of the Application in its present form is contributing to the uncertainty surrounding KBJR's proposed digital operations, KBJR also respectfully requests that the FCC act expeditiously in this matter.

Respectfully submitted,

KBJR LICENSE, INC.

By: 

Tom W. Davidson, Esq.
Erin L. Dozier, Esq.

Akin, Gump, Strauss, Hauer & Feld, LLP
1333 New Hampshire Ave., N.W.
Suite 400
Washington, D.C. 20036
202/887-4000

Its Attorneys

Dated: July 30, 2001

CERTIFICATE OF SERVICE

I, Erin Dozier, an employee of Akin, Gump, Strauss, Hauer & Feld, L.L.P., certify that a copy of the foregoing comments on behalf of KBJR License, Inc., was served via first class, postage prepaid mail on this 30th of July, 2001, upon the following:

Ms. Marsha Cranberg
Arnold & Porter
555 12th Street, NW
Washington, DC 20001
Counsel for Duluth-Superior Area Educational Television Corporation

Barbara Kreisman
Chief, Video Services Division
Mass Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Portals II Building, Room 2-C-347
Washington, D.C. 20554

A handwritten signature in black ink, appearing to read 'Erin Dozier', is written over a horizontal line.

Erin Dozier